

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DAVID L. MILLER,

Plaintiff,

Case No. 05-C-1211

v.

UNITED STATES,

ORDER

Defendant.

On November 18, 2005, *pro se* plaintiff, David L. Miller, filed a complaint against the United States pursuant to 28 U.S.C. §1331. By order of December 14, 2005, the court denied the plaintiff's petition for leave to proceed *in forma pauperis* under 28 U.S.C. §1915(g), and directed the plaintiff to pay the \$250.00 filing fee in full within 30 days or the action would be dismissed.

To date, the plaintiff has not paid the requisite filing fee. Instead, on December 21, 2005, the plaintiff filed a "Motion to Vacate Order and to Voluntarily Dismiss for District Prejudice." The court will construe the plaintiff's motion as a notice of voluntary dismissal under Rule 41(a)(1), Federal Rules of Civil Procedure. Therefore, the court will dismiss this case, without prejudice. The portion of the plaintiff's motion asking the court to vacate its order of December 14, 2005, will be denied as moot.

NOW, THEREFORE, IT IS HEREBY ORDERED that this action be and hereby is **DISMISSED**, without prejudice, pursuant to Rule 41(a)(1), Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the portion of the plaintiff's motion seeking an order to vacate the order of December 14, 2005, be and hereby is **DENIED AS MOOT**.

IT IS ALSO ORDERED that the Clerk of Court enter judgment dismissing the plaintiff's claims and this action pursuant to Rule 41(a)(1), Federal Rules of Civil Procedure.

IT IS ALSO ORDERED that copies of this order be sent to the warden at the Wisconsin Resource Center and to Corey F. Finkelmeyer, Assistant Attorney General, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin, 53707-7857.

Dated at Milwaukee, Wisconsin this 27th day of December, 2005.

BY THE COURT

/s/ William E. Callahan, Jr.
WILLIAM E. CALLAHAN, JR.,
United States Magistrate Judge